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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

RAYMOND ROMERO,

Plaintiff,

Case No: 2:10-cv-00537-RLH-RJJ

vs.

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT; OFFICER RICARDO LARA,
individually and in his official capacity;
OFFICER JOEY HERNANDEZ, individually
and in his official capacity; DOES III through X,
DOES XI through XX,

Defendants.

JOINT PRE-TRIAL ORDER

I.

NATURE OF THE ACTION

This is a 42 U.S.C. § 1983 lawsuit. Plaintiff's remaining allegations are: (1) whether the Defendant officers violated Plaintiff's Fourth Amendment rights by using excessive force when the Defendant Officers detained Plaintiff on August 29, 2008; (2) whether the Defendant officers violated Plaintiff's Fourteenth Amendment equal protection rights by discriminating against him based upon his race; (3) whether the Defendant officers committed the state law tort of battery; and (4) whether the Defendant officers were negligent.

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II.

STATEMENT OF JURISDICTION

Plaintiff's federal claims are brought pursuant to 42 U.S.C. § 1983. Plaintiff's state law claims are properly before this Court under the doctrine of pendant jurisdiction pursuant to 28 U.S.C. §1367.

III.

STATEMENT OF ADMITTED FACTS

The following relevant facts are admitted by the parties and require no proof:

1. Plaintiff demands a jury trial.
2. On or around August 29, 2008, Plaintiff was a visitor to Las Vegas, Nevada.
3. On August 29, 2008, Ofc. Ricardo Lara was a police officer with the Las Vegas Metropolitan Police Department and operating in the course and scope of his employment.
4. On August 29, 2008, Ofc. Joey Hernandez was a police officer with the Las Vegas Metropolitan Police Department and operating in the course and scope of his employment.
5. LVMPD is a municipality in Clark County, Nevada.

IV.

STATEMENT OF UNCONTESTED FACTS

The following facts, though not admitted, will not be contested at trial by evidence to the contrary:

1. Plaintiff suffered a broken ankle on August 29, 2008.
2. Plaintiff required emergency medical care on August 29, 2008 and was taken to Sunrise hospital by ambulance, with the ambulance being summonsed by the LVMPD.
3. According to Plaintiff's medical records, on August 29, 2008, Sunrise Hospital Medical Center lists Plaintiff's blood alcohol at .21 percent.
4. Plaintiff was not arrested or cited by Defendants on August 29, 2008.
5. Both Defendant Officers are Hispanic.

6. Plaintiff is Hispanic.

7. Defendant Officer Hernandez punched Plaintiff with a closed fist on August 29, 2008.

8. Plaintiff's 42 U.S.C. § 1983 Fourteenth Amendment due process claim against the Defendant officers was dismissed by the Court.

9. All Plaintiff's 42 U.S.C. § 1983 claims against LVMPD were dismissed by the Court.

10. Plaintiff's state law negligent hiring, training, and supervising claims were dismissed by the Court.

11. Plaintiff's state law intentional infliction of emotional distress claim was dismissed by the Court.

V.

STATEMENT OF CONTESTED ISSUES OF FACT

The following are the issues of fact to be tried and determined upon trial.

1. The uniforms the Defendant officers were wearing.

2. Whether the Defendant officers announced their presence prior making physical contact with Plaintiff.

3. Whether a reasonable officer could have concluded that the circumstances surrounding the disturbance warranted immediate intervention by the Defendant officers.

4. Whether the Defendant officers had reasonable suspicion to take Plaintiff into custody and, if so, whether the Defendant officers used reasonable force in taking Plaintiff into custody.

5. Whether the Defendant officers issued verbal commands, and if so, whether Plaintiff ignored the commands or was given an opportunity to comply.

6. Whether the Defendant officers approached Plaintiff from behind, without his knowledge or any warning.

7. How Plaintiff was taken to the ground.

8. What happened once Plaintiff went to the ground.

9. Whether Plaintiff was ever up on top of Defendant Lara while on the ground.

10. Whether Defendant Hernandez punched Plaintiff on the side or in the face.

11. Whether Defendant Hernandez gave Plaintiff instructions to quit resisting.

12. Whether Plaintiff ignored any instructions to quit resisting.

13. Whether any of the Defendant officers' actions were racially motivated.

14. The extent of Plaintiff's pain and suffering.

15. Whether Plaintiff requires future medical care and treatment.

16. Whether Plaintiff's medical care and treatment was reasonable.

VI.

STATEMENT OF CONTESTED ISSUES OF LAW

The following are the issues of law to be tried and determined upon trial.

1. Whether the Defendant officers had reasonable suspicion to take Plaintiff into custody.

2. Whether Plaintiff was detained lawfully.

3. Whether the force used by the officers to take Plaintiff into custody was reasonable or excessive.

4. Whether the Defendant officers racially discriminated against the Plaintiff.

5. Whether the Defendant officers are protected by the doctrine of qualified immunity.

6. Whether an unprivileged battery of Plaintiff occurred.

7. Whether Plaintiff is entitled to punitive damages.

VII.

EXHIBITS

A. THE FOLLOWING EXHIBITS ARE STIPULATED INTO EVIDENCE IN THIS CASE AND MAY BE SO MARKED BY THE CLERK:

1. Plaintiff's exhibits:

- a. Sunrise Medical Center Medical Records (Pltf 0034-42; 0077-97)
- b. Photos of Plaintiff's injuries (Pltf 0001-04)
- c. Score Physical Therapy medical report (Pltf 0056-62)*
- d. Northwest Tucson Surgery Center medical report (Pltf 0042; 0063-76)*¹
- e. One page from Use of Force Report of Ricardo Lara (LVMPD 0005)
- f. One page from Use of Force Report of Joey Hernandez (LVMPD 0013)
- g. Voluntary Statement of Sean Brown (LVMPD 0002)

2. Defendants' exhibits:

- a. Officer's Report of Ricardo Lara (LVMPD 0005)
- b. Officer's Report of Joey Hernandez (LVMPD 0013)
- c. Voluntary statement of Frances Martinez (LVMPD 0003)
- d. LVMPD Incident Recall Sheet (LVMPD 0001)
- e. LVMPD's Use of Force Policies and Procedures (LVMPD 0021-48)

¹ *Defendants agree to stipulate to the authenticity of Plaintiff's listed medical records if Custodian of Records Certificates are provided by the time of trial.

- f. LVMPD's Arrest Policy and Procedures (LVMPD 0050-57)
- g. LVMPD's policies regarding requesting medical (LVMPD 0058)
- h. Plaintiff's answers to interrogatories

B. AS TO THE FOLLOWING ADDITIONAL EXHIBITS THE PARTIES HAVE REACHED THE STIPULATIONS STATED:

1. Plaintiff's exhibits: None
2. Defendants' exhibits: None

C. AS TO THE FOLLOWING EXHIBITS, THE PARTY AGAINST WHOM THE SAME WILL BE OFFERED OBJECTS TO THEIR ADMISSION UPON THE GROUNDS STATED:

1. Plaintiff's exhibits:
 - a. Plaintiff's unofficial transcripts (Pltf 0005-09). Objection: authenticity, foundation, relevance, and best evidence.
 - b. Plaintiff's work history (Pltf 0010-11). Objection: relevance, foundation and best evidence.
 - c. Plaintiff's medical care statements (Pltf 0013-34). Objection: Collateral source, best evidence, and authentication.
 - d. Remaining pages from Use of Force Report of Ricardo Lara (LVMPD 0006-0011). Objection: Relevance, speculation, subsequent remedial measure, and more prejudicial than probative.
 - e. Remaining pages from Use of Force Report of Joey Hernandez (0014-0020). Objection: Relevance, speculation, subsequent remedial measure, and more prejudicial than probative.

2. Defendants' exhibits:

None.

D. DEPOSITIONS:

1. Plaintiff will offer the following depositions: Plaintiff will offer the depositions of any witness unavailable at the time of trial or for impeachment purposes.
2. Defendants will offer the following depositions: Defendants will offer the

depositions of any witness unavailable at the time of trial or for impeachment purposes.

E. OBJECTIONS TO DEPOSITIONS:

1. Defendants object to plaintiff's depositions as follows: Defendants object to the use of Sgt. Norm Jahn's depositions except as to the portions regarding his personal involvement in the events of August 28, 2009. Defendants object to plaintiff using any portions of Sgt. Jahn's deposition regarding his subsequent investigation and any opinions that contain subsequent remedial measures.

2. Plaintiff objects to defendant's depositions as follows:

None.

VIII.

WITNESSES

The following witnesses may be called by the parties upon trial:

A. STATE THE NAMES AND ADDRESSES OF PLAINTIFF'S WITNESSES:

1. Raymond Romero, c/o McFarling Benson, 2800 W. Sahara Ave., #6G, Las Vegas, NV 89102.

2. Francis Martinez, c/o McFarling Benson, 2800 W. Sahara Ave., #6G, Las Vegas, NV 89102.

3. Kevin P. Moore, M.D., c/o Sunrise Hospital, 3186 South Maryland Pkwy., Las Vegas, NV 89109.

4. Geoffrey Landis, D.O., c/o Tucson Orthopaedic Institute, 1521 E. Tangerine Rd., Ste. 101, Oro Valley, AZ 85737.

5. Sgt. Norman Jahn, c/o Marquis Aurbach Coffing, 10001 Park Run Drive, Las Vegas, NV 89145.

6. Ofc. Ricardo Lara, c/o Marquis Aurbach Coffing, 10001 Park Run Drive, Las Vegas, NV 89145.

1 7. Ofc. Joey Hernandez, c/o Marquis Aurbach Coffing, 10001 Park Run
2 Drive, Las Vegas, NV 89145.

3 8. Sean Brown, 4116 Spring Crest, Las Vegas, NV 89129.

4 9. PMK LVMPD, c/o Marquis Aurbach Coffing, 10001 Park Run Drive, Las
5 Vegas, NV 89145.

6 10. D.P. Van Blaricom, MPA, 835-91st Lane, N.E., Bellevue, Washington
7 98004.

8 11. Dr. Michael Robak, 315 Silver Hill Road, Easton, Connecticut 06612.

9 12. Custodian of Records, Score Physical Therapy, 6420 E. Tanque Verde Ste.
10 100 Tucson, AZ 85715.

11 13. Custodian of Records, Northwest Tucson Surgery Center, 1550 E.
12 Tangerine Rd. Oro Valley, AZ 85737

13 **B. STATE THE NAME AND ADDRESSES OF DEFENDANTS' WITNESSES**

14 1. Ofc. Ricardo Lara, c/o Marquis Aurbach Coffing, 10001 Park Run Drive,
15 Las Vegas, NV 89145.

16 2. Ofc. Joey Hernandez, c/o Marquis Aurbach Coffing, 10001 Park Run
17 Drive, Las Vegas, NV 89145.

18 3. Sgt. Norman Jahn, c/o Marquis Aurbach Coffing, 10001 Park Run Drive,
19 Las Vegas, NV 89145.

20 4. Calvin D. Wandick, P#9174, c/o Marquis Aurbach Coffing, 10001 Park
21 Run Drive, Las Vegas, NV 89145.

22 5. Sean Brown, 4116 Spring Crest, Las Vegas, NV 89129.

23 6. Francis Martinez, c/o McFarling Benson, 2800 W. Sahara Ave., #6G, Las
24 Vegas, NV 89102.

7. Jack Ryan, Legal and Liability Risk Management Institute, Public Agency
Training Counsel, Inc., 5325 Decatur Boulevard, Indianapolis, IN 46241.

IX.

Counsel have met and herewith submit a list of three (3) agreed-upon trial dates:
November 1, 2011, November 14, 2011 and December 5, 2011

X.


It is estimated that the trial herein will take a total of 4 days.

APPROVED AS TO FORM AND CONTENT:


MARQUIS AURBACH COFFING

MCFARLING BENSON

By:


Craig R. Anderson, Esq.
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10001 Park Run Drive
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Attorney for Defendants

By:


Emily McFarling Benson, Esq.
Nevada Bar No. 8567
2800 W. Sahara Ave., #6G
Las Vegas, NV 89102
Attorney for Plaintiff

X.

ACTION BY THE COURT

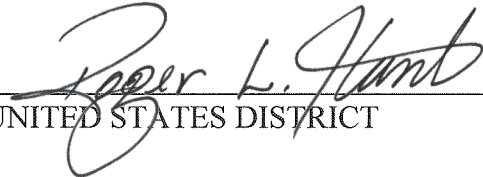
- a. This case is set for /jury trial on the /stacked calendar on
November 14, 2011, 8:30 a.m. Calendar call shall be held on November 9, 2011, 8:45 a.m.
- b. Trial briefs, proposed jury instructions and proposed *voir dire* questions
shall be filed electronically no later than 12:00 p.m., November 9, 2011.

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1 The foregoing pretrial order has been approved by the parties to this action as evidenced
2 by the signatures of their counsel hereon, and the order is hereby entered and will govern the trial
3 of this case. This order shall not be amended except by order of the court pursuant to agreement
4 of the parties or to prevent manifest injustice.

5 Dated : June 1, 2011

6
7 
8 UNITED STATES DISTRICT JUDGE

9
10 **(NOTE:** Due to the unusually large number of complex criminal
11 cases set for lengthy trials before this Court, civil trials may
12 possibly be held in a "trailing status" for weeks or months, or
13 they may be assigned to another trial Judge, who will be
14 identified at calendar call. Therefore, the Court strongly urges
15 the parties to consider their option to proceed before a U.S.
16 Magistrate Judge pursuant to Local Rule IB 2-2, in accordance
17 with 28 USC Section 636(c) and FRCP 73.)
18 "AO 85 Notice of Availability, Consent and Order of Reference -
19 Exercise of Jurisdiction by a U.S. Magistrate Judge" form is
20 available on the Court's website www.nvd.uscourts.gov. **Consent**
21 **forms should NOT be electronically filed.** Upon consent of all
22 the parties, counsel are advised to manually file the form with
23 the Clerk's Office.
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